

REMARKS

80 claims remain in the case of which claims 1 through 10 and 25 through 80 have been withdrawn.

The claims have been amended in view of the official action and to better describe what Applicant believes to be his invention. In Particular Claim 11 has been amended to claim a sensor for detecting erosion of a wear surface of a component wherein the component is manufactured from a material selected from the group consisting of rubber, cast iron, steel and ceramics or combinations thereof. Support for this amendment can be found, for example at paragraph [036] of the specification as filed.

The Examiner has rejected Claims 11-15 and 21 on the grounds that they are unpatentable over US Patent No. 4,655,077 by Purvis in view of US Patent Application 2001/0001236 by Lake. Applicant submits that Claim 11 as amended traverses these rejections in view of the following argument.

It is perhaps trite law that if in order to arrive at a claimed invention it is necessary to modify a device disclosed in a prior reference such that it would no longer be suitable for its intended purpose, then there would be no motivation to modify that intended reference in the manner proposed, and as a result the reference in question cannot be used in support of a *prima facie* finding of obviousness (see for example *In re Fritch*, 23 USPQ2d 1780).

Lake relates to a device for sensing the presence of termites comprised of an electrical circuit placed on a substrate and embedded in a material. It is apparent that in order for the termites to be detected, the material in which the circuit is embedded must be sufficiently soft and palatable to the termite, otherwise the termite will not attempt to consume or remove the material and the device will serve no purpose, ergo the use of wood in Lake as the material of choice in which the circuit is embedded. Applicant submits that Claim 11 as amended claims materials clearly inedible for a termite, and therefore modification of Lake to arrive at the invention as now claimed at Claim 11 would result in a

device which is no longer suitable for its intended purpose.

In view of the above, Applicant submits that Lake clearly teaches away from being modified by the teachings of Purvis to arrive at a *prima facie* finding of obviousness and therefore that Claim 11 as amended is an allowable claim. As claims 12 through 24 all depend from an allowable claim, it is submitted that they, too, are allowable claims.

The rejections of the original claims are believed to have been overcome by the present remarks. From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such an action is earnestly solicited.

No fee is believed to be required to enter this response. However, should a fee be necessary, please charge Deposit Account No. 07-1742.

Respectfully submitted,

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